

16.06.2023
Item No.6
gd/ssd

MAT/1011/2023
IA NO: CAN/1/2023
M/S BITUMIX INDIA LLP AND ANR.
VS
DEPUTY COMMISSIONER OF REVENUE,
STATE TAX AND ORS.

Mr. Vinay Kr. Shraff,
Mr. Jitesh Sah
..for the Appellants.

Md. T.M. Siddiqui
..for the State.

1. This intra court appeal is directed against the order passed by the learned Single Bench dated 10th April, 2023 in WPA 6801 of 2023 declining to pass any interim order as sought for by the appellants.

2. With the consent on either side, the writ petition is taken up along with this appeal for disposal.

3. The allegation which led to an order of penalty being passed by the respondent authority is that the goods which were being transported by the appellants to Assam were covered by e-Way Bill which was valid upto 18th March, 2022. According to the appellants, on account of the breakdown of the vehicle the goods did not move outside the territory of the State of West Bengal and was stationed at Dankuni on 18.03.2022. The consignee in the meantime had sold the goods which were in transit to another purchaser in Assam and the goods were transported by the same vehicle after generating a new e-Way Bill on

22.03.2022. The vehicle was detained on 25.03.2022 and order of penalty has been passed on the ground of first e-Way Bill on 18.03.2022 had not been renewed/extended by the appellants.

4. Accordingly, a charge under Section 129 of the CGST Act and WBGST Act has been led against the appellants and ultimately resulting an imposition of 200% penalty.

5. It is not in dispute on the date and time and the goods were intercepted that is on 25.03.2022 the appellants had a valid e-Way Bill.

6. The only mistake committed by the appellants is on not renewing the e-Way Bill which expired on 18.03.2022.

7. This in our opinion the appellants should have done since the goods were sold in transit. Therefore, we are of the view that there is a violation had committed by the appellants but the violation is not as grave enough to call for imposition of penalty at the rate of 200%. Since on the date when the vehicle was intercepted the goods were covered by a valid e-Way Bill which satisfies the requirement under Section 129 of the Act. However, that the mistake committed by the appellants in not renewing the earlier e-Way Bill which expired on 18.03.2022 the appellants should be put on terms.

8. For the above reasons, the appeal as well as the writ petition are allowed and the order of penalty passed by the adjudicating authority as affirmed by the appellate authority are set aside and modified with the direction to the appellants to pay a penalty of Rs.50,000/- which will include both CGST and WBGST instead of 200% penalty as imposed by the authorities. Upon such the appellants are entitled to pay the said amount by agreeing to recover the sum of Rs.50,000/- from the bank guarantee which has been furnished by the appellants and upon adjustment the respondent authorities shall issue appropriate communication to the appellants' bank to discharge the bank guarantee for the remaining amount.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(UDAY KUMAR, J.)